

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT Taos Field Office

Borrego Direct Sale Project Environmental Assessment DOI-BLM-NM-F020-2021-0018-EA

FINDING OF NO SIGNIFICANT IMPACT

BACKGROUND

In 2015, a US District Court Judge ruled in favor of the United States of America as it found that Mr. Gilbert Borrego was in trespass on public lands managed by the Bureau of Land Management, Taos Field Office (BLM) along the Rio Grande in Rio Arriba County, New Mexico. The court found that Mr. Borrego was in trespass on 1.4 acres of public lands—Tract 24B—within a 34.5-acre parcel located adjacent to his private land. Over a period of many years, Mr. Borrego had developed the 1.4 acres with an access road and various fixtures, and he had collected equipment and other items on the property. The U.S. District Court’s judgment had required Mr. Borrego to vacate the property.

Following this judgement, however, the two parties agreed to a settlement, allowing Mr. Borrego to continue to occupy the 1.4 acres. As part of the settlement agreement, Mr. Borrego transferred ownership of a parcel of private land within the Rio Grande del Norte National Monument in Taos County, New Mexico to the BLM. In turn, the BLM now proposes to sell the 1.4-acre tract in Rio Arriba County directly to Mr. Borrego.

This Finding of No Significant Impact (FONSI) has been prepared for the Proposed Action.

FINDING OF NO SIGNIFICANT IMPACT

Based on an environmental assessment (DOI-BLM-NM-F020-2021-0018-EA) (EA), which analyzes potential impacts from the Borrego Direct Sale proposal, and evaluating the criteria for considering the potentially affected area and degree of the effects of a specific action provided by the Council on Environmental Quality (CEQ) regulations at 40 Code of Federal Regulations (CFR) 1501.3 (1) and (2) i-iv, I have determined that the sale of 1.4 acres to Borrego, as described under the Proposed Action, does not constitute a major federal action that would have a significant effect on the quality of the human environment. Therefore, an environmental impact statement (EIS) is not required.

The Proposed Action and its effects have been evaluated in a manner consistent with the CEQ regulations for determining the potentially affected area and the degree of the effects. Per 40 CFR 1501.3 (1) and (2) i-iv, a determination of the degree of the effects of the action as used in the National Environmental Policy Act (NEPA) requires consideration of both the affected area and the degree of the effect. The affected area refers to the setting in which the action would occur (national, regional, or local) and its resources. Significance varies with the setting of the Proposed Action. The degree of the effect refers to the severity of the impact. The degree of the effect relates to four criteria outlined in 40 CFR 1501.3 (2) i-iv. This FONSI is based on the affected area and degree of the effects of the Proposed Action.

AFFECTED AREA

Under the Proposed Action, the BLM would dispose of 1.4 acres of public land through a direct sale per the terms of the settlement agreement discussed above. The disposal would include only the surface estate for parcel—Tract 24B—described as follows:

New Mexico Principal Meridian
T. 22 N., R. 8E,
sec. 25, Tract 24B

While the 1.4 acres is within the floodplain along the Rio Grande, Tract 24B has been substantially disturbed and altered by years of use as a part of a primary residence, including a driveway, parking, storage, and other fixtures.

In addition, in 1967 the Army Corp of Engineers built a levy on what appears today to be on the uplands between the north bank of the Rio Grande and private property belonging to Mr. Borrego. This levy was built to protect private property and BLM public land from flooding during high flows in the Rio Grande, but inevitably altered the landscape along the river.

As a result of years of occupation by Mr. Borrego and past alteration by the Army Corp of Engineers, the parcel no longer contains habitat or other resources of interest to the public.

DEGREE OF EFFECTS

The following discussion is organized around the four criteria described at 40 CFR 1501.3(2)i-iv.

1. *Both short- and long-term effects.*

Potential impacts related to the Proposed Action are disclosed and analyzed in Chapter 3 of the attached EA. The analysis focuses on potential impacts to cultural resources and designated or proposed critical habitat for species afforded protection under the Threatened and Endangered Species Act. The BLM also considered and dismissed from detailed analysis the potential for the parcel disposal to impact riparian resources and habitat for other special status species for reasons explained in Table 1-2 of the EA.

No short-term or long-term changes are anticipated to cultural resource or important wildlife habitat as a result of the land disposal—the transfer in title to Tract 24B. Though the direct sale would be an irretrievable loss of public lands, the relatively small size of the proposed disposal and its lack of resource values makes the duration of the effects negligible. The 1.4 acres has essentially been inhabited and used as if in private ownership for decades, such that the disposal of public lands, in this case, would not change any land or resource use opportunities available to the public.

2. *Both beneficial and adverse effects.*

As explained in Chapter 3 of the EA, the BLM does not project adverse impacts resulting from the Proposed Action since the 1.4 acres proposed for disposal is substantially disturbed and altered by Mr. Borrego's long-term use and occupancy and modifications to the landscape made historically by the US Army Corp of Engineers.

Riparian resources and important habitat, however, would benefit from fencing the remaining 33.1-acre block of public lands adjacent to Borrego's private land and Tract 24B. The title to Tract 24B would

include a provision that requires a fence to be maintained along the property boundary and that the motorized access to the public lands from Tract 24B is prohibited. The purpose of these terms is to provide greater protection to any habitat and riparian values that occur on the adjacent public lands.

3. *Effects on public health and safety.*

The Proposed Action does not have the potential to effect public health and safety. No such possible impacts were identified by the BLM interdisciplinary team or through the BLM's consultation efforts.

4. *Effects that would violate Federal, State, Tribal, or local law protecting the environment.*

None of the effects associated with the Proposed Action would violate any Federal, State, Tribal, or local law protecting the environment. All laws and regulations pertaining to the National Historic Preservation Act, Endangered Species Act, and other relevant statutes have been observed in the proposal and analysis of this action. The proposed disposal of Tract 24B is fully consistent the BLM's regulatory authority and applicable laws.

CONCLUSION

Therefore, on the basis of the information contained in the EA (DOI-BLM-NM-F020-2021-0018-EA) and all other information available to me at this time, it is my determination that:

- The degree of the effects of the Proposed Action do not rise to the level of significance requiring preparation of an EIS. (See criteria 1–4 explained in detail.)
- The Proposed Action is in conformance with the Taos Resource Management Plan, as presented under section 1.3 of the attached EA. Therefore, preparation of an EIS is not necessary.

Authorized Officer

Date